

REMARKS

Claims 1-31 are pending.

Claims 6-12, 18, and 25 have been canceled without prejudice, subject to reinstatement in a continuing application.

Claims 19, 26, and 31 have been amended.

Rejection Under 35 U.S.C. §103

Claims 19-21, 23, 24, 26-29, and 31 have been rejected based on the combination of Winstanley in view of Rhoten. Applicant respectfully asserts that independent claims 19, 26, and 31 as amended herein overcome and are allowable over this rejection. Favorable reconsideration is respectfully requested.

Rhoten provides for a selected “time” controlled dispense. A timer control is shown and described in Rhoten. Such a time dispensed system is specifically referred to, and taught away from in Winstanley (see, paragraph 28). Winstanley provides discrete volumes and not any variable control.

Further, with regard to the rejections under 35 U.S.C. §103 (a), it is respectfully submitted that applicant’s claims are patentable, as the rejections have not established a *prima facie* case of obviousness. According to section 706.02 (j) of the MPEP the rejection must meet three basic criteria to establish a *prima facie* case of obviousness:

- (1) first, there must be some reasonable suggestion or motivation in the prior art to modify the reference or to combine the reference teachings;
- (2) second, there must be reasonable expectation of success in obtaining the claimed invention based upon the references relied upon to support the rejection; and
- (3) third, the prior art reference (or references when combined) must teach or suggest all of the claimed limitations.

MPEP Section 706.02(j) further requires that the teaching or suggestion to make the modification or reference combination and the expectation of success, must be found in the prior art, and may not be based upon the applicants disclosure.

The combination of the cited references does not provide a *prima facie* case of obviousness. Contrary to the statements in the Office Action, there is no reasonable suggestion or motivation in the prior art to modify the references. In fact, to the contrary, the references *teach away from* the prior art since the teachings of the one reference are indicated to be undesirable in the second reference. As noted above, the Winstanley reference specifically teaches away from the timer as set forth in the Rhoten reference.

Second, there is no reasonable expectation of success since; once again, the teachings are in opposition. Additionally, the combination of the references cannot teach all of the claimed limitations set forth in the amended claims. This failure is due to the fact that references cannot be combined if they teach away from each other. As such, the basis for the rejection under 35 U.S.C. §103 needs to be supported by either reference *individually* since the references teach away from the combination. Clearly, neither reference can support the rejection on its own.

With the foregoing in mind, Applicant respectfully asserts that the claims as set forth herein overcome and are allowable over the rejection under 35 U.S.C. §103. Applicant respectfully requests withdrawal of this rejection and allowance of the claims. Applicant respectfully requests favorable reconsideration of the claims presented herein.

If there is any issue remaining to be resolved, the Examiner is invited to telephone the undersigned so that resolution can be promptly affected.

It is requested that, if necessary to effect a timely response, this paper be considered as a Petition for an Extension of Time sufficient to effect a timely response with the fee for such extensions and any other fees or shortages in other fees, being charged, or any overpayment in such fees being credited, to the Deposit Account of Barnes & Thornburg LLP, Deposit Account No. 12-0913 acknowledging attorney docket no. (27726-103050).

Respectfully submitted,
BARNES & THORNBURG LLP



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